

unsuitable along with any other attorney from the Katten Muchin law firm. Robert Friedman participated directly with Natbony on issues relating to these Trusts. In addition, in making decisions relating to the Trusts, Natbony claims to have relied on the lawyers at Katten Muchin where he was a partner and the firm that handled all of Thomas and Dafna Kaplan's legal work. As such, Robert Friedman and the Katten firm are tainted and should not be allowed to act as co-trustees or as successor trustees.

80. The Dafna Trust also provides for the appointment of Kaplan family members as a co-trustee or as a successor trustee. Kaplan and his family members could not serve as non-conflicted and independent trustees here, where Kaplan and his wife have already demonstrated that they will not treat beneficiaries fairly in an unbiased fashion.

81. A non-conflicted court appointed trustee is necessary in order to ensure that the trustee will abide by the terms of the Trusts.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Aguiar requests that this Court enter judgment in her favor and grant the following relief:

- a) Judgment in favor of plaintiff Aguiar finding that Natbony breached his fiduciary duty and a ruling that Natbony's January 7, 2009 Amendments to the Trusts removing plaintiff Aguiar as a beneficiary are invalid and/or null and void and/or rescinded.
- b) Judgment in favor of plaintiff Aguiar finding that Natbony abused his discretion, breached his duties of reasonable care, diligence and prudence and acted in bad faith by making the Unitrust Elections and surcharging Natbony for all payments to the Settlers on account of the Unitrust Elections with statutory interest.

- c) Judgment in favor of plaintiff Aguiar finding that Natbony abused his discretion, breached his duties of reasonable care, diligence and prudence and acted in bad faith in handling the trust assets and surcharging Natbony for all trust fund losses with statutory interest and all trustee payments made to Natbony.
- d) Judgment in favor of plaintiff Aguiar finding that the Settlers, Thomas and Dafna Kaplan, aided and abetted Natbony's breaches of fiduciary duty and holding them liable for payment of the Trusts' fund losses with statutory interest.
- e) A declaration that the January 7, 2009 Amendments to the Trusts are invalid and/or null and void and/or rescinded.
- f) Appointment of an interim non-conflicted co-trustee during the course of the litigation and/or issuance of a preliminary injunction freezing the activity of the Trusts during the course of this litigation or requiring that leave of the court be obtained before any changes are made to the assets of the Trusts.
- g) Judgment in favor of plaintiff Aguiar for the removal of Natbony as trustee, and a decree preventing Robert Friedman from serving as successor trustee and a declaration that no member of the Settlers family and/or Natbony can serve as a trustee of the Trusts because any such persons would be conflicted and improper and an order appointing a non-conflicted trustee in their place and stead.
- h) Judgment directing that the defendant Natbony provide a full and complete accounting of the financial condition and management of the Trusts.
- i) Judgment in favor of plaintiff Aguiar for all attorneys' fees and costs associated with this action to be paid from the Trusts during the course of this litigation.
- j) Such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all issues so triable.

Dated: September 2, 2010

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

By: 

Howard Vickery, Esq.
hvickery@bsfllp.com
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Carlos M. Sires, Esq. (*Pro Hac* pending)
Sigrid S. McCawley, Esq. (*Pro Hac* pending)
401 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLEN AGUIAR,

Plaintiff,

v.

WILLIAM NATBONY, individually and as
Trustee of the THOMAS S. KAPLAN 2004
QUALIFIED TEN YEAR ANNUITY TRUST
AGREEMENT and the DAFNA KAPLAN 2003
EIGHT YEAR ANNUITY TRUST
AGREEMENT, THOMAS KAPLAN and
DAFNA KAPLAN,

Defendant.

10 Civ. 6531 (PGG)

COMPLAINT
EXHIBIT 1

From: kaplan600@aol.com [mailto:kaplan600@aol.com]
Sent: Monday, December 15, 2008 8:37 AM
To: Bill Natbony
Subject: Fw: Hey Tommy

Sent via BlackBerry by AT&T

From: kaplan600@aol.com
Date: Mon, 15 Dec 2008 13:36:10 +0000
To: Ellen<ellenag112@aol.com>
Subject: Re: Hey Tommy
Dear Ellen,

Guma has Leib's number. Feel free to speak to Leib and you'll get the whole story...which encompasses Reuven Feinstein as well. You may be surprised.

I have no interest in disputing whether or not any of the charities with whom Guma has interacted are meritorious. In the interest of amity and conflict resolution, I asked Leib the one relevant question: how much of Guma's donations were EJF-related, so that those sums could be reimbursed to my nephew. He told me that, other than \$350k (he was unsure about another \$500k), the sums in question had no relation to me or to EJF, but rather were following a separate agenda. The authority you refer to having been vested in Guma to build up EJF was never given by me. It couldn't have been...as Guma insisted to Leib that I should not know of his activities. Had I approved of what he was doing, we'd have no issue. I will not, however, consider his unilateral initiatives to be something that others should pay for.

As to nightmarish scenarios ...if you think that threats will work with me, you clearly don't know me. Do not make the mistake as others have - to their sincere regret - in interpreting my forbearance as weakness. It is not. It is my strength that I give people a chance to climb down from untenable positions, so that everyone can get about their lives in peace. Guma knows this.

I have, however, been on the receiving end of threats and lies from Guma long enough. And your letter is the final straw. You should know that, contrary to any legal advice you may have heard, the vulnerable parties in litigation aren't the people in New York. Everything related to Guma is terribly exposed - his lawyers are aware of some (but far from all) of the exposures, and you should ask them. (And please don't believe Jay's advice; he has lost more lawsuits than anyone we know...and has more legal judgments against him than anyone since Nuremberg.) I can't stress this enough (as it will surely affect you too)... when it comes to your allusions of "floods", be advised that whatever legal war Guma starts, others will finish. The offensive that is launched will be across the broadest front imaginable. In presenting the various cases, Guma's reputation will be destroyed, utterly and thoroughly. I have never wanted that for him, as evidenced by the tactful way I have tried to explain our separation to those who aren't a party to our issues.

TK-LJK0196